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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,557	01/21/2004	Wolf-Georg Forssmann	P60448US1	8650

136 7590 02/16/2006
JACOBSON HOLMAN PLLC
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EXAMINER

MERTZ, PREMA MARIA

ART UNIT PAPER NUMBER

1646

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/760,557	Applicant(s) FORSSMANN ET AL.	
	Examiner Prema M. Mertz	Art Unit 1646	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-19 is/are pending in the application.
- 4a) Of the above claim(s) 10-12, 14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 9, 13, 16-19 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Applicants election of Group I (claims 9, 13, 16-19) on 12/20/2005 is acknowledged.

Upon further consideration, it was determined that the elected Group encompasses two distinct inventions.

Election/Restriction

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 9, 13, 16-17, are drawn to a polypeptide of amino acid sequence of set forth in SEQ ID NO:6, classified in Class 530, subclass 351.

Group V. Claims 18-19, are drawn to a N-terminally truncated fragment of the polypeptide of amino acid sequence of set forth in SEQ ID NO:6, classified in Class 530, subclass 351.

Should any one of the Groups from I and V be elected, Applicant is required to select one polypeptide. Any change of amino acid residues at any one or more positions in the polypeptide sequence is considered, absent factual data to the contrary, a distinct polypeptide. Once one polypeptide sequence is selected, all other sequences will be withdrawn from consideration.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and V are independent and distinct, each from the other, because each of the polypeptides are materially different products, which are structurally and chemically different, capable of separate manufacture and use. The products in the different Groups are physically and chemically distinct from each other, and if patentable would support separate patents. Distinctness is further shown because a search of one of the polypeptides would not necessarily

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reveal art pertinent to the other and each of these products can be made and used without any one or more of the other products. Separate searches would be required for searching each of the polypeptide products eg. a search of the literature for the polypeptide of SEQ ID NO:6 would not necessarily reveal art for the N-terminally truncated fragment of the polypeptide of amino acid sequence set forth in SEQ ID NO:9. Therefore, each of the polypeptides are not related and are properly restrictable in accordance with MPEP § 806.04 and MPEP § 808.01.

Having shown that these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their recognized divergent subject matter as defined by MPEP.. § 808.02, the Examiner has *prima facie* shown a serious burden of search (see MPEP.. § 803). Therefore, an initial requirement of restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Advisory Information

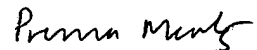
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prema Mertz whose telephone number is (571) 272-0876. The examiner can normally be reached on Monday-Friday from 7:00AM to 3:30PM (Eastern time).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres, can be reached on (571) 272-0867.

Official papers filed by fax should be directed to (571) 273-8300. Faxed draft or informal communications with the examiner should be directed to (571) 273-0876.

Information regarding the status of an application may be obtained from the Patent application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Prema Mertz Ph.D., J.D.

Primary Examiner

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February 6, 2006